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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 004625

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TAGS: [PGOV](#) [KJUS](#) [PREL](#) [PK](#)

SUBJECT: MORE SIGNS THAT SUPREME COURT MAY RULE IN FAVOR OF MUSHARRAF

REF: A. ISLAMABAD 4602

[1](#)B. LAHORE 656

Classified By: Anne W. Patterson, Reasons 1.4 (b), (d)

[1](#)1. (C) Summary: President Musharraf's inner circle is still very concerned about a Supreme Court decision against Musharraf's eligibility to run for re-election, but, according to a senior attorney who initially argued the case against Musharraf, the Court will probably not rule against President Musharraf's re-election. The Court may rule once again that the petitioners against Musharraf lack standing, and the ruling will likely be 7-4 in favor of the President, he said. One of the attorneys for the plaintiffs did not appear in court on October 29, and opposition parties are planning on a pro-Musharraf verdict. Although other anti-government verdicts are possible -- the Court may rule that the National Reconciliation Ordinance is not legal and that Nawaz Sharif should be allowed to return to Pakistan -- it still appears likely that the Court will go easy on the Musharraf case. Still, a lot of this is speculation on both the part of the government and attorneys, and the Court has surprised observers before. End summary.

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PPP Plaintiff's Attorney MIA  
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[1](#)2. (C) People's Party (PPP) Senator Sardar Latif Khosa failed to appear before the Supreme Court today (Oct 29) on behalf of the party's presidential candidate, PPP chairman Makhdoom Amin Faheem. A PPP contact told PolOff that Khosa left for London after PPP leader Benazir Bhutto ordered him to stand down. Another PPP attorney briefly came before the Supreme Court to announce that the PPP would adopt in toto Aitzaz Ahsen's argument of last week. Ahsen had argued for the legal fraternities' presidential candidate Wajihuddin Ahmed.

[1](#)3. (C) PPP sources viewed today's non-action as a political gift to Musharraf. They equated today's legal maneuver to the party's October 6 election ploy to stay in Parliament but not show up for the vote. This time, the PPP has maintained its petition against Musharraf's running for re-election in uniform, but has avoided days of media headlines outlining the party's opposition. Khosa told PolOff on October 24 that Bhutto was on the verge of pulling Faheem's petition, but reversed herself at the 11th hour, ordering Khosa to "strenuously argue the case against Musharraf," i.e., repeat the opposition's case for as long as the Court would allow him center stage. Khosa's absence in court shows that Bhutto

changed her mind.

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Court May Decide Opposition's  
Case Is Not Maintainable  
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14. (C) Attorney General Malik Qayyum argued that the petitions against President Musharraf's eligibility to run for re-election were not maintainable -- meaning that the Court should dismiss the case based on procedural rather than substantive grounds. (Note: The government won its last challenge to Musharraf's eligibility by using the "non-maintainability" argument. End Note.)

15. (C) Senior attorney Mohammad Akram Sheikh, who argued this first case against Musharraf's eligibility prior to the October 6 election, told PolOff that Qayyum's argument may be the escape route the Court will use to avoid an anti-Musharraf decision. While the judges will not rule that Musharraf is eligible to run for president while Chief of Army Staff, they may rule (once again) that they do not have the jurisdiction to decide the issue. Potential "non-maintainability" decisions include:

-- The Chief Election Commissioner's decisions on eligibility are final and cannot be contested in court;  
-- The plaintiffs should appeal to a High Court before the Supreme Court;  
-- The plaintiffs are not complaining that their fundamental rights were violated, only for their statutory rights of candidature, and as such, they are not appealable to the Supreme Court; or

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-- The plaintiffs were proxy candidates who contested the election only to challenge Musharraf's candidacy, and the Court cannot pronounce a judgment on a pseudo-candidates' objections.

16. (C) The Court could also take a harder line but still not directly oppose Musharraf, Sheikh said. Another possible decision would require Musharraf to remove his uniform and run for president again. The Court could also allow him to remain president only until new assemblies are in place.

17. (C) Either way, Sheikh said, the vote will likely be 7-4 in favor of the government. Two of the swing votes (Raja Fayyaz Ahmed and Ghulam Rabbani) will take direction from the Chief Justice. Sheikh said that Chief Justice Iftikhar Chaudhry would have formed a full bench if he had wanted them to make an anti-government ruling, since a full court would likely have ruled against Musharraf.

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No Game Plan by Opposition  
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18. (C) Meanwhile, the various opposition groups that make up the All Parties Democratic Movement (APDM) are as disjointed as they were before the October 6 presidential election. PolOff met October 29 with Pakistan Muslim League-Nawaz (PML-N) Information Secretary Ahsan Iqbal and with Jamiat Ulema-e-Islam (JUI-F) Senator Maulana Rahat Hussain, separately. They both believed the Court would return a pro-Musharraf verdict by November 1. Their parties were not even making plans to protest the ruling, both admitted. Hussain said that the Muttahida Majlis-e-Amal (MMA) coalition of religious parties will not meet until November 8 to discuss a possible reaction.

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Other Decisions May Go Against the Government  
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19. (C) While the Supreme Court may have resigned itself to

endorse Musharraf's eligibility, they may not show sympathy for the government in other cases. According to Mohammad Akram Sheikh, the Court will likely rule that the National Reconciliation Ordinance (NRO) is not legal and that former Prime Minister Nawaz Sharif should be allowed to return to Pakistan. Even attorneys Aitzaz Ahsen and Latif Khosa -- both PPP members -- agreed that there is a strong case to be made against the legality of the NRO.

¶10. (C) The Court is scheduled to hear the Nawaz Sharif case on October 30 and could make a final ruling as early as tomorrow.

¶11. (C) Comment: Although Musharraf's inner circle is still anxious about a negative Court ruling and is busily concocting contingency plans, indications are still that the Court will not rule against him. But even with another Supreme Court win in his pocket, Musharraf might still face defeat on his attempts to avoid contempt charges for government officials involved in the Nawaz deportation and to mend political fences with Benazir Bhutto. End comment.  
PATTERSON